

FEB 21 2012

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U.S. COURT OF APPEALS

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United States Court of Appeals for
Ninth Circuit

David Stebbins Appellant
vs Case No. 12-35082
Microsoft, Inc. Appellee

Supplement to Opening Briefing

Comes now, pro se Appellant David Stebbins, who hereby submits the following supplemental brief.

I wish to take this opportunity to address a few things that the District Court said in its per curiam that were frivolous. Because the case was closed immediately after the ~~case~~ ~~was~~ opinion was docketed, I did not have a chance to raise them in the originating court. Fortunately, as this court will soon see, ~~the~~ the issues I raise in this supplementary briefing should have been painfully obvious, so the District Court had to have already known about them, anyway.

First, all of my motions were denied as frivolous. How were they frivolous? The district court did not even try to explain how such arguments as 1) Defendant is time-barred, 2) Defendant's argument causes the contract to lack mutuality of obligation, and 3) there's no law that says I can't do what I'm doing, are frivolous! Remember, to be frivolous, the

arguments must not merely be meritless, but must be so ridiculous that the petitioner had to have known that they are stupid, otherwise he is just an idiot.

I find it rather convenient that Judge Cohener did not give an explanation. If the frivolousness of my case was so obvious that he felt that it would have been a waste of breath to explain it, then why did he bother with a per curiam in the first place? Furthermore, why am I allowed to appeal in forma pauperis? Doesn't the law specifically require courts to deny IFP status if the case is frivolous?

I don't think the district court actually thought the case was ~~frivolous~~ frivolous, but more on that later.

The second issue I wish to point out is the reason the district court gave for not sanctioning me: He claimed that I raised "interesting questions" about the disparate negotiating power between businesses and consumers. This sounds like a pretty shallow reason for not sanctioning me.

Not that I disagree with not being sanctioned. But is that the real reason I was not sanctioned? I doubt it. I think the district

was just looking for an excuse not to sanction me. But, again, more on that later.

Third and finally, the district court said that the forum I chose to air these "interesting questions" the court speaks of is not the legitimate forum to use.

The arguments I raised in that category are that to allow one party to unilaterally amend a contract, but not the other party, caused the contract to be unconscionable and to lack mutuality of obligation.

I am not going to ask a rhetorical question. What I am about to give is a statement: A court of competent jurisdiction is absolutely the correct forum to raise issues like that!

Such egregious error can only be explained one way: The district court is under ~~Microsoft~~ Microsoft's thumb. Oh, I am open to a better explanation, but I have yet to hear one. In fact, my whole purpose for filing this supplementary briefing is because I have received no explanation at all! So, if anyone has a better explanation, I am all ears. Otherwise, *qui tacet consentire videtur*.

Before I sign off, I want to say this on public record: I need a public outcry. I can't do it on my own, though I tried my

best. Public outcries DO work. They've worked before, and they can work again. Please don't give the bad guys any breathing room, here. That is all.

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CERTIFICATE OF SERVICE

Appellees have been served with this briefing by allowing them to view it on ECF.

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